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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,992	02/13/2002	William A. Burris		6883

37211 7590 07/14/2009  
BASCH & NICKERSON LLP  
1777 PENFIELD ROAD  
PENFIELD, NY 14526

EXAMINER

CONLEY, SEAN EVERETT

ART UNIT

PAPER NUMBER

1797

NOTIFICATION DATE

DELIVERY MODE

07/14/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

dneels@bnpatentlaw.com

dmasters@bnpatentlaw.com

mnickerson@bnpatentlaw.com

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/074,992

**Applicant(s)**

BURRIS ET AL.

**Examiner**

SEAN E. CONLEY

**Art Unit**

1797

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 07 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☒ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-3, 5, 7-18 and 20-34.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Sean E Conley/  
Primary Examiner, Art Unit 1797

Continuation of 3. NOTE: The proposed amendments raise a new issue that requires further search and/or consideration. For example, the proposed amendment to claim 31 (the addition of the word "automatically") has not been previously presented to the Examiner for search and/or consideration. Furthermore, the proposed limitations to the claims raise the issue of new matter in that the Examiner must ensure that the proposed limitations are supported by the specification. Furthermore, other proposed amendments raise a new issue that requires further search and/or consideration, specifically claims 13 and 33. The proposed amendments to claims 13 and 33 have not been previously presented for examination and require further search and/or consideration.

Continuation of 11. does NOT place the application in condition for allowance because:

112 Rejections:

The arguments with regards to the rejections under 35 U.S.C. 112, 2<sup>nd</sup> paragraph are not commensurate in scope with the claims since the arguments are directed to proposed claim limitations that have not been entered.

Restriction Requirement:

The applicant's argument with regards to the restriction requirement and the withdrawal of claim 32 are not persuasive. As stated in the final rejection, the device as claimed can be used in a materially different process than that of claim 32. For example, the method is for disinfecting water and lines for medical use whereas the device can be used for disinfecting water and lines of non-medical uses such as water and lines of an industrial plant or factory. The applicant argues that the "device" referred to is a device for disinfecting operatory unit water and lines as recited in claim 1. However, this is simply an intended use of the device. The device is capable of being used in other processes such as a process of disinfecting fluids other than water such as aqueous chemical solutions. Therefore, the restriction requirement is proper and claim 32 remains withdrawn from consideration as being directed to a non-elected invention.

Finality of the Office Action:

The Examiner disagrees with the argument that the finality of the office action is premature. Specific rejections of claims 18 and 22 were set forth in the non-final office action mailed on 9/4/2008 (see page 10, section 6). Section 3 of the final office action simply clarified, as a courtesy to the Applicant, the explicit teachings of the limitations of claims 18 and 22 in the references of Contreras and Burris. It should be noted that the specific citations disclosed on section 3 of the final office action were also cited in the non-final office action mailed on 9/4/2008 (see pages 10-11 of the office action mailed on 9/4/2008). Therefore, the final rejection is not premature and is maintained.

103 Rejections:

Concerning claims 1 and 30, applicant argues that it is unclear from Contreras how positive pressure is maintained in the circulation passageway using pump (10). This argument is not persuasive as it is directed to as function and/or intended use of the device. The pump (10) is capable of maintaining a positive pressure in the circulation passageway, even if not explicitly disclosed by Contreras. The pump (10) inherently increases the pressure of the fluid passing thru the pump thus generating a positive pressure at the outlet. The Applicant further argues that the combination of Contreras in view of Burris fails to teach a control system including an ozone sensor located in the pressurized liquid circulation passageway, and an alarm to indicate whether the device is operating properly. The Examiner respectfully disagrees. Pages 8-9 of the final office action addresses these limitations. Contreras discloses the pressurized liquid circulation system and Burris has been relied upon to teach the control system, alarm, and ozone sensor. The Applicant is reminded to read the entire office action before making assertions that the Examiner has not considered all claim limitations. Claims 1 and 30 remain rejected for the reasons set forth in the final office action.

The Applicant argues that claims 3, 7-11, 18, 20-22, 25, 26 and 33-34 are not believed to be set forth in the final office action of March 2009 and as such the office action is incomplete, incorrect, or the noted claims are in condition for allowance. The Examiner respectfully disagrees. The final office action addresses all limitations of the above mentioned claims.

Applicant's argument with respect to claim 31 are not commensurate in scope with the pending claims since it is directed to proposed claim amendments that have not been entered. For the record, the Examiner has not "misconstrued" the limitations of claim 31 but rather interpreted them broadly. If the Applicant intends for the limitations to mean something other than the broadest reasonable interpretation, it is suggested that the Applicant amend the claims to narrow the scope.

Applicant's arguments with regards to the combination of Burris in view of Contreras, and Engelhard et al. in view of Burris are not persuasive. These arguments have been addressed in previous office actions.

Claims 1-3, 5, 7-18, and 20-34 remain rejected for the reasons set forth in the final office action mailed on March 24, 2009.

/Sean E Conley/  
Primary Examiner, Art Unit 1797